APPEAL NO. 021459
FILED JULY 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 7, 2002. The hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury of _____, does not extend to and include an injury to level L5-S1 of the spine; that the employer did not make a bona fide offer of employment (BFOE) to the claimant on December 20, 2001; and that the claimant did have disability resulting from an injury sustained on _____, beginning on January 4, 2002, and continuing through the date of the CCH. The appellant/cross-respondent (carrier) appealed, arguing that the hearing officer erred in determining the BFOE and disability issues. The claimant cross-appealed, arguing that the hearing officer erred in determining extent of injury. Subsequently, the claimant submitted an untimely supplementation of her cross-appeal to support her extent-of-injury argument. The carrier responded to the claimant's cross-appeal, urging affirmance of the extent-of-injury determination. The claimant responded, essentially urging affirmance of the BFOE determination.

DECISION

Affirmed.

The hearing officer did not err in determining that the employer did not make a BFOE to the claimant on December 20, 2001. The carrier argues that the hearing officer erroneously relied on Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6), rather than Section 408.103(e), to evaluate a BFOE. The carrier summarizes the legislative history of Rule 129.6, and essentially argues that the Rule 129.6 is overly broad and imposes additional burdens on the carrier to prove that a BFOE must include an attached Work Status Report (TWCC-73). The Appeals Panel's jurisdiction is limited to reviewing the Texas Workers' Compensation Commission's (Commission) CCH decisions and orders. Sections 410.202 and 410.203. We do not have the power to determine the constitutionality of statutes or rules, including the 1989 Act and the Commission rules. Texas Workers' Compensation Commission Appeal No. 92275, decided August 11, 1992; Texas Workers' Compensation Commission Appeal No. 951542, decided October 25, 1995. Therefore, we will not address the carrier's arguments regarding the validity of Rule 129.6.

On appeal, the carrier asserts that the employer provided the claimant with a written offer of employment that was in compliance with the "intent" of Section 408.103 as a matter of law, and that a TWCC-73 need not be attached to the offer of employment. We disagree with the carrier's assertion. Rule 129.6(c) sets out the requirements for a BFOE. In Texas Workers' Compensation Commission Appeal No. 010110-S, decided February 28, 2001, we held that Rule 129.6(d) provides that a carrier may deem an offer to be bona fide if it, among other requirements, included *all* of

the information required in Rule 129.6(c). We also noted that Rule 129.6 indicates that the Commission "will" find an offer to be bona fide if it conforms to the doctor's restrictions, *is communicated to the employee in writing, and meets the requirements of Rule 129.6(c).* In the present case, we find no error in the hearing officer's finding that there was no BFOE extended to the claimant because the offer did not contain the TWCC-73 upon which the offer was based. We believe the language of Rule 129.6 is clear and unambiguous.

Furthermore, the carrier also argues that if the Appeals Panel determines that a TWCC-73 has to be attached in order for the written offer to be "bona fide," that the claimant's testimony and medical evidence show a BFOE. We note that Rule 129.6 does not contain exceptions for failing to strictly comply with its requirements. The evidence sufficiently supports the hearing officer's determination that the employer did not make a BFOE to the claimant on December 20, 2001, as the TWCC-73 was not attached to the offer of employment.

Regarding the extent-of-injury and disability determinations, these are issues involving questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. We have reviewed the complained-of determinations. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Judge

_____
Roy L. Warren
Appeals Judge